

1882-021 Chancery Causes: David Ely vs. Timothy Sisk
Lee Co.

Noell, Hobbs, Blackburn, Baylor

CA-Debt
T-Property

To The Honorable, the Judge of the Circuit
Court of Lee County Virginia,

The bill of Complaint of David Ely of said
County respectfully represents, that at the May
Term of the Circuit Court of said County, Your
Orator obtained ^{a confirmation of} judgment against Timothy Sisk
of said County for the sum of \$160.00, with legal
interest thereon from the 1st day of September
1850, till paid, and the Costs, amounting to \$^{a copy of which judgment is herewith filed with} 10.00.

On said judgment, an execution issued, which
was returned by the Sheriff of Lee, "no property
found". Your Orator knows of no property out of
which to make said debt, principle, interest
and Costs, except two lots with their improve-
ments in the Town of Jonesville, Lee County Vir-
ginia, commonly known as the Tavern proper-
ty, and the lot adjoining, and known on the
plan of said Town, respectively as lots No 4
Your Orator avers that his only chance to make
his debt out of said Sisk is out of the said houses
and lots, which can only be done by selling
such portion of said property as may be nec-
essary to make the said debt principle, in-
terest and Costs and the Costs of this suit. He
further avers that there are outstanding
judgments against said Sisk to the full
value of the said property, or very nearly so
still unsatisfied. So that the rents and prof-
its for five years, would not, by a good deal
pay this debt together with the other judgments
outstanding against him, Your Orator being
therefore without an adequate remedy at Com-
mon law, and relievable only in a Court of
Equity, his prayer therefore is that the said
Timothy Sisk be made party Deft. to this bill,
and be required to answer the several allegations

Whereof, fully, truly and Completely on oath,
as if the same had been propounded in the
form of interrogatories; that a decree be ren-
dered subjecting the said property to the pay-
ment of the said debt, principle, interest
and cost, and also the costs of this suit; that a
Commissioner be appointed to make sale of
said property, and out of the proceeds to pay
the said debt, principle, interest and costs, and
the costs of this suit. And your orator will
ever pray &c.

May the l^t Wealth's writ of Spa issue &c.

Sharp for Plff

Late clk p 12.52 (chm)

A	15.00
S -	1.00
Comr.	5.25
	72
	<hr/>
	34.49
	2.52
	<hr/>
	37.01

David Ely
vs Bill in Chy
Timothy Sisk

July Rule, 1860 Bill
Filed 22.4 contd.

March Dece confirmed
April May June July Aug.
Sept. Oct. Nov. Dec. Jan 1861
Feb. Mar. April May continued
1861 June contd. July continued
" Aug. contd. Sept. contd.

Oct. Nov. Dec. contd.
1862 January Feb. March
April May June July
Aug. Sept. Oct. Nov. Dec. contd.

1863 Jan Feb March April May
June July Aug. Sept. Oct.
Nov. and Dec. continued

1864 - Continued this year

1865 - Continued this year

1866 - Jan Feb. Mar. April May
June July Aug. continued
Sept. set for hearing by Comf
Sept. continued

1867 April Dece. continued
Sept. Dece. for account

1868 April continued
Sept. continued

1869 April continued
Sept. continued

Chd to May 1866, in 1866
1870 May contd
" Oct. contd.

1871 May. contd.
" Oct. "

1872 May
" Oct. "

1873 May Dece. contd.

1874. Contd this year.

1875. Contd " "

1876. Contd " "

J. B. M. 92 etc

6 7.56 July 1879

Oct. C. 2.52 July 1881

6 1.15

1877. Contd this year.

1878. Contd " "

1879. Contd " "

1880. Contd " "

1881. Nov. contd. "

1882. Nov. contd.

" Aug. Nov. Dec. 1882

Chd 27.

To The Honorable John A Campbell Judge of
The Circuit Court of Lee County. The answer of
Timothy Sisk to the bill of Complaint of David Ply
exhibited in this Honorable Court against the Defendant
This Defendant after saving and reserving to himself
the benefit of all just and proper exceptions to said bill
for answer thereto saith that he hopes to be able to pay
and satisfy Complainants Claim or so much thereof
as is justly due to him without having to resort to the
proceeds rents or profits of the property of Defendant
for that purpose referred to in Complainants bill and
ought to be subjected to the payment thereof. The said
property is valuable and portions of it could not be
sold off from the Residence without a great sacrifice
to Defendants rights and interest therein. Your Respondent
would further state that the rents and profits of said
property would fully discharge said judgment of Complaint
in less than two years And Deft having fully
answered Complaints bill or so much thereof as he is
advised it is material for him to answer prays to
be hence dismissed with his Costs &c

Wm & Holdway

Lee County Court

This day Timothy Sisk personally
came before the undersigned and made oath that
that the allegations contained in the foregoing answer
are true so far as they depend upon his own knowledge
and that so far as they depend upon the information
derived from others he believes them to be true Given
under my hand this 28th day of September 1866

Henry J. Morgan, Clk

Timothy Pick

add & Answer

David Ely

Old Book

450

David El
against
Timothy Sisk

plff

deft

In ch.

This Cause came on again to be heard
this day on the papers formerly read in
the Cause and the report of Commissioner
Henry J Morgan and was argued by
Counsel. On Consideration whereof it is
adjudged ordered and decreed that Commissioner
Morgan, who is hereby empowered, Summon
before him the persons who occupy the houses
and lots of the defendant Sisk in the bills
mentioned, And examine them on oath touching
the time for which they rent the said premises
from defendant, And also whether or not they
have paid him the rent agreed upon, ~~And~~
And whatever rent may be due from
the persons in possession of said premises
the said Commissioner is directed to collect ^{from them}
and apply so much as may be necessary
to satisfy the plaintiffs claim, but should have
no rent be due from said occupants. Then
the said Commissioner is directed to rent out
the said premises after the expiration of the
present term for which they have rented from
the defendant for such length of time as
may be sufficient to satisfy the plaintiffs
claim with costs of this suit and
the Cause is continued.

David Ely

W. } Decm

Timothy Dusk

Entered this 18th day of
Sept. 1867 order Book
page 499.

H. J. Morgan Clerk
to

Enter this done.

J. A. C.

Sept 18. 1867

ch 152

Davice Ely - plff }
against } In ch.
Timothy Sisk - Deft }

This Cause came on this day to be heard upon the bill of the plaintiff the exhibits filed, the answer of the defendant and was argued by counsel.

And it appearing to the court that the defendant is indebted to the plaintiff in the sum of \$160.00 with interest thereon from the 1st of November 1855 till paid and the costs of

which cannot be made out of the personal effects of defendant. But defendant admits that he owns real estate the rents whereof within the period of five years will be sufficient to pay the plaintiffs claim. An order was made whereof it is adjudged ordered and decreed that the plaintiff recover against the defendant the said sum of \$160.00 with interest thereon from the 1st of November 1855 till paid and also the sum of \$

And it is further ordered that Harry J. Morgan be made a Commissioner whose duty it is to rent out the real estate of the defendant for such period as may be sufficient to pay the plaintiffs claim and the costs of this suit and report his action to this court and the cause is continued.

David Ely
as { Secy
Timothy Sisk

Entered O.B.
Page 485 & 486

Enter this decree
J. A. C.
April 27. 1867

Commissioner's Office Louisville April 17-1868.

David L. Ely ----- Plaintiff

against
Timothy Sick ... Defendant

In Chancery.

The Deposition of James R. Koell and others, tenants of the defendant Sick, taken to ascertain their respective indebtedness to the said defendant and the said Koell being sworn states. That about the month of Sept: 1867 he rented of the defendant Sick what is known as the Old Tavern property or rather a part thereof for the period of one year commencing about the 1st of Oct: 1867 for which he was to pay him \$100.⁰⁰ at the end of the year - and he also rented one half of the little shop situated on Main street, West of the Tavern property for the same period for which he was to pay \$15.⁰⁰, and that he has paid the said Sick both said sums, lacking a few dollars, probably not exceeding \$5.⁰⁰, the precise amount not known there being some small matters unsettled as yet between him and the said defendant.

J. R. Koell

Dr. C. F. Hobbs, another tenant of the said defendant Sick being sworn states, That he rented of the said Sick a part of the old Tavern property known as the Johnson Room ^{for one year} commencing about the first of April 1868 for which he

was to pay the said debt \$65.⁰⁰ in Cash notes at the end of the year, subject to the following Conditions viz. The said debt. was to build a stable upon the said premises and fence in a certain square of the garden ^{and to have the privilege of} if he failed so to do this witness was to build said stable and fence and to deduct the cost thereof out of said rent.

C. F. Doty

George W. Blackburn another Tenant of Defendant Sick being duly Sworn States that he last rented of the defendant Sick, the Small Shop in which he now works as a Shoemaker in Sept. 1867. for the term of One year from that date, for which he was to pay said Sick \$15.⁰⁰ in work which he has accordingly paid, and for this last year he has overpaid him, but for the year previous to Sept 1867. he was indebted to said Debt a Small Sum ~~and~~ both of which is unsettled. Witness is of opinion that upon a fair and final Settlement of these matters between himself and Sick ~~he is of opinion~~ that there is nothing due the defendant or but very little, But since making the foregoing Statement from memory. Witness has examined his books and finds that the rent due said Sick from the time he first rented of him to the 15th of April 1868 amounts to \$25. And that his account against said Sick to said date amounts to five ^{leaving} said Sick in his debt about \$ ^{at said last date} That his present term will expire the 1st day of Sept next at which time he will owe the said Debt \$5.20 or ^{thereabouts} ~~and further this witness certifies~~

G. W. Blackburn

Robert C. Bayler clerk for Daugherty & Beatty, Servants
also of said Defendant Sick. Being first duly sworn
deposes and Says. That about the 20th day of April
1866 Elbert S. Martin rented of the defendant Sick
the Storehouse now occupied by "Daugherty & Beatty" for
the term of twelve months, and without ~~for~~ for which
he was to pay \$100.⁰⁰ and without any further
contract continued in possession of the same until
the 23rd day of September 1867, when Daugherty &
Beatty brought out the said Elbert S. Martin and
rented the said Storehouse of the defendant Sick.
The said Martin paid said Sick for said
rent up to 23^d day of September 1867

By the terms of a written contract entered into be-
tween the defendant and Daugherty & Beatty, the latter
rented of the former the said Storehouse for the term
of six months with the privilege of keeping it long-
er than six months if they so desired by paying
the said Sick at the rates of \$100.⁰⁰ per annum.

The said Daugherty & Beatty have now been in
possession of said Storehouse near seven months
and have paid said Sick towards the rent there
of \$75.64 being a sum more than the rent
amounts to at the present time. Should they con-
tinue in possession one year said Daugherty &
Beatty will then owe the defendant \$24.36. And
further this witness saith not.

R. C. Bayler

David Cady

vs. 3 Depositions.

Timothy Sisk

(A)

Messrs. Dougherty & Baaty, and James R. Hall, D. C. F. Hobbs and
 George W. Blackburn Tenants of defendant Timothy Sisk you
 are hereby notified that at the clerk's office of the circuit
 Court of Lee County on Friday the 17th day of April 1868, I
 will proceed to execute the foregoing decree at which time
 and place you and each of you will please attend, to State
 upon oath how much if any you respectively owe the Dft.
 Sisk
 Henry J. Morgan Clerk
 April 16th 1868

Recd. Copy

in Copy of Decree & Notice

Timothy Sisk

W. accept & serve of
 the within Decree & Notice

J. R. Hall

To the Court

Dougherty & Baaty

W. H. C. Morgan

David Ely
against
Simons, Lisk

Plaintiff
Defendant
In Chancery.

To the Hon. John A. Campbell, Judge of the Circuit Court of the County of ... By a Decree of your Honor pronounced in the above styled Cause on the 27th day of April last, the subscriber was appointed a Commissioner and directed to rent out the real estate of the defendant for such period as may be sufficient to pay the plaintiff's claim, and the costs of this suit &c.

Your Commissioner begs leave to report that he has not complied with the said decree from the fact that the real estate of the defendant mentioned in the said decree or that part of it which would be likely to bring anything at public renting is already under lease, and your Commissioner conceives that he has not the right to interfere with the lessees thereof.

The Storehouse situated upon said real estate is rented by Capt. E. S. Martin for the sum of \$100.⁰⁰ annually. The small shop immediately East of said store, and almost joining the same is rented by James R. Noll for the sum of \$20. annually, and the first year thereof will expire on the first day of September 1867. The house or rather room formerly occupied by Peter C. Johnston and the small room immediately east of it, and the two rooms immediately over the first two, are now occupied by Dr. A. C. Price, who was rented the same of the defendant for one year which will expire on the 7th day of March 1868 for the sum of \$85.⁰⁰ payable on the last mentioned day.

The residue of said real estate, except the above

house on the hill near the Methodist Church is now occupied by William R. Graham Esq, under a sort of Contract by which he is to pay the rent there in repairing said property.

The old house on the hill is now occupied by Mrs. Craig, but your Commissioner is not informed as to whether she pays rent - therefore or not.

Respectfully Submitted

Henry L. Morgan Comr
 Hoped and etc

David Bly

Wm McKinnis Report

Sanctity Book

1897

Harvard. etc

H. L. Morgan Comr

Henry's for 75cts.

for 100cts.

36
 36
 36
 36
 36

1897

Circuit Court Clerk's Office April 17th 1868.

David Ely

Plaintiff

against

In Chancery.

Lincolnton Dick

Defendant

To the Hon. John A. Campbell Judge of the Circuit Court
of Lee County.

In pursuance of a decree of your Honor entered in the above cause on the 18th day of September last I summoned before me on the 17th day of April 1868 James R. Noell, C. F. Hobbs, George W. Blackburn, and R. L. Bayler, clerk for the firm of "Daugherty & Beatty," tenants of the defendant Dick and who occupy the houses and lots in the Bill mentioned, whom I examined in relation to the terms upon which they respectively rented from the defendant, when the same would expire, and the amount due from them respectively to the said defendant, and their statements I committed to writing, and the same is filed herewith marked (A), from which it appears that James R. Noell rented of the defendant a part of what is known as the Old Tavern property in September 1867 for the period of one year from that date, that he was to pay therefor \$100.⁰⁰ at the end of the year, and that he has paid the defendant the full amount of the rent except about \$5.⁰⁰; that C. F. Hobbs rented of the defendant for one year commencing April 1st 1868

another part of said Old Tavern property for which he was to pay \$65.⁰⁰ in Cash notes at the end of the year, subject to this condition that the said Defendant was to build a stable upon said premises and fence off a certain square of the garden, and if he failed so to do, the said Hobbs was to have the privilege of making said improvements and the value thereof was to be deducted out of said rent and for which rent he has as yet paid nothing; that George W. Blackburne rented of said defendant a little shoe shop on said premises on the first day of September 1867 for the period of one year from that date for which he was to pay the sum of \$15.⁰⁰, and that at the end of his said term he will owe the said defendant the sum of \$5.20 or thereabouts; that 'Daugherty & Peaty' about the 23rd of September 1867 rented of the defendant the Storehouse upon said premises now occupied by them for the period of six months with the privilege of keeping the same longer, and that they were to pay defendant therefor at the rate of \$100.⁰⁰ per annum that up to the present time they have paid the defendant \$75.⁰⁴ and that at the end of the first year, they will owe said defendant the sum of \$24.35.

It thus appears that nothing has as yet been realized from said rents for the pay-

ment of any part of the plaintiffs' judgment. It is probable that if this proceeding had been executed soon after the rendition of this decree something might have been realized, but for a long period after the rendition of said decree the same was forgotten and overlooked by me.

The defendant insists that as the plaintiffs' judgment against him (which it is the object of this proceeding to enforce) was obtained upon an undertaking in existence long prior to the end day of April 1865 that he ought, according to principles of Equity, to have the benefit of the present Stay Law, and that the rents and profits of his premises cannot be applied to the payment of the same further than to discharge two years' interest on the amount of said judgment. How this may be I am not competent to determine, and I only mention it to call the same to the attention of the Court, if your Honor has not already considered the subject. All which is respectfully submitted.

Henry J. Morgan Counselor
April 17-1868.

David Cely

vs. 3 Commr's Report.

Timothy Bisk
Filed April 17-1868

Commr's Fee \$4.50.

Virginia.

At a Circuit Court continued and held for Lee County at the
Courthouse thereof, on Tuesday the 18th. day of September 1866.

David Ely

Complainant

against

Timothy Sisk

Defendant

} In Chancery.

This suit having been pending in this Court since 1860, without
any action being had therein, It is ordered that unless the Complainant
shall proceed to prosecute this suit, the same will be dismissed at the next
term, till which time the cause is continued.

A copy

Teste ~

H. J. Morgan Clerk

David Ely^(S)
3
vs. Rule in Chiq.

3
Timothy Sisk.

April Term 1867.

Nov 9th 1866

Executed by delivering a
copy of the within order
to David Ely.

J. W. Orr, S. C. C.

The Commonwealth of Virginia,

TO THE SHERIFF OF LEE COUNTY, GREETING :

WE COMMAND YOU TO SUMMON

Sinathy Sisk

to appear before the Judge of the Circuit Court of Lee county, at the Court House, in the Clerk's office, at

February ~~March~~ Rules next, to answer *a bill, in Chancery exhibited*
in our said Court against him by David Ely.

And have then there this writ. Witness, RICHARD M. HAMBLLEN, Clerk of our said Court, at the Court House,

this 3rd day of ~~February~~ ^{March} 1860, in the 8th year of the Commonwealth.

February

R M Hamblen clk

S

S

David Ely
W. { Spain in Ely
Timothy Sisk

Friday Rules 1860

March Rules 1860

July 16th 1860

executed

D. Patrick DS